

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DUANE L. HARPER,

Plaintiff,

Civ. No. 10-377-CL

v.

ORDER

MICHAEL J. ASTURE, Commissioner
of Social Security,

Defendant.

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation (#25), and the matter is now before me. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Plaintiff filed objections and the defendant filed a response. Accordingly, I have reviewed the file of this case *de novo*. See 28 U.S.C. §

636(b)(1)(c); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). I conclude the report is correct.

Harper's main objection is that the ALJ improperly weighed the different medical opinions. Harper argues that Dr. Bert's opinion that Harper could not work for at least 12 months was supported by objective medical evidence, and therefore the ALJ should have credited Dr. Bert's opinion. The ALJ, however, is charged with resolving conflicts and ambiguities in the medical record. Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) (internal citation omitted).

As noted by the ALJ, Dr. Bert's opinion differed from that of former treating physician Jorge Santibanez, former treating provider Audrey Ouke, and the state reviewing physicians. (Admin. R. 20.) The ALJ noted that unlike Dr. Berg's opinion, the four opinions the ALJ credited contained "no material differences" and were "most consistent with the record as a whole." (Admin. R. 20.) The ALJ provided "specific and legitimate reasons supported by substantial evidence in the record" for rejecting Dr. Bert's opinion. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In short, Harper argues that the ALJ chose to credit the wrong medical opinion. However, when, as here, the medical evidence "is susceptible to more than one rational interpretation," I must uphold the ALJ's decision." Andrews, 53 F.3d at 1039-4.

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CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#25) is adopted. The Commissioner's decision is AFFIRMED.

IT IS SO ORDERED.

DATED this 28 day of September, 2011.

A handwritten signature in black ink, reading "Owen M. Panner", written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT JUDGE